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August 12, 2009

VIA ECF

Hon. Patty Shwartz, U.S.M.J.
United States District Court
for the District of New Jersey
United States Post Office & Courthouse
Federal Square
Newark, New Jersey 07101

Re: Marcus v. BMW of North America, LLC et al
Civil Action No. 08-5859 (KSH/PS)
Order on Informal Application Regarding Unresolved Discovery Disputes

Dear Judge Shwartz:

This firm represents defendant BMW of North America, LLC (“BMW NA”) in the above-noted action. We write regarding the Court’s Order on Informal Application Regarding Unresolved Discovery Disputes (Docket Entry 66). The Order recites that it was made on August 5, 2009, it appears to have been filed on August 7, 2009, but the CM/ECF notice indicates the “transaction” was entered, and the Notice of Electronic Filing (attached) was issued, on August 11, 2009. Consequently, as discussed this morning with Your Honor’s law clerk, we write to address the appropriate time for filing for reconsideration under Local Civil Rule 7.1(i) or to appeal the Order under Local Civil Rule 72.1(c)(1).

The Local Civil Rules require an application to be filed within 10 days of entry of the order (L. Civ. R. 7.1(i)) or within 10 days after service of the order (L. Civ. R. 72.1(c)). Paragraph 9 of Standing Order 05-1 (Electronic Case Filing) deems transmission of the Notice of Electronic Filing the equivalent of notice under Fed. R. Civ. P. 77(d), which commences the running of any time period in accordance with Fed. R. Civ. P. 6(a). Under Fed. R. Civ. P. 6(a)(2), where any time period in the Federal Rules or Local Rules is less than 11 days, weekends and holidays are not counted. Additionally, pursuant to Paragraph 7 of Standing Order 05-1, service by Notice of Electronic Filing shall be treated in accordance with Fed. R. Civ. P. 6(e) [now Rule 6(d)], which provides for an additional 3 days at the end of the period.

By our calculations, and after reference to all the above cited rules, the period ends on August 28, 2009.

Hon. Patty Shwartz, U.S.M.J.

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We ask that the Court advise us if it believes our calculation is incorrect, as summer vacation schedules preclude us from consulting with our client and reaching a decision much sooner than August 28, 2009, in which case we would need to seek an extension of time.

Thank you for your courtesies.

Respectfully,

s/Christopher J. Dalton

Christopher J. Dalton

CJD/dtb

cc: All Counsel of Record (via ECF & email)

Dalton, Christopher

From: njdefiling@njd.uscourts.gov
Sent: Tuesday, August 11, 2009 1:50 PM
To: ecfhelp@njd.uscourts.gov
Subject: Activity in Case 2:08-cv-05859-KSH-PS MARCUS v. BMW OF NORTH AMERICA, LLC et al Order on Oral Motion

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

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U.S. District Court

District of New Jersey [LIVE]

Notice of Electronic Filing

The following transaction was entered on 8/11/2009 at 1:50 PM EDT and filed on 8/7/2009

Case Name: MARCUS v. BMW OF NORTH AMERICA, LLC et al

Case Number: 2:08-cv-5859

Filer:

Document Number: 66

Docket Text:

**ORDER on informal application regarding production of documents. Signed by Magistrate Judge
Patty Shwartz on 08/05/2009. (nr,)**

2:08-cv-5859 Notice has been electronically mailed to:

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The following document(s) are associated with this transaction:

8/12/2009

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] [3c81efb017ae251fe2b77ece7f75018e1fa204aeae2a19796c3dfed30a35f3f5284
cb2a81b66394e937f8b4d24a14122a0d585f077b3863b2fbbb1291bf49051]]